

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

In Re:

Annice Marjorie Hartman,

Debtor.

RESPONSE TO TOPLINE UNION'S
OBJECTION TO CONFIRMATION

BKY 04-34554 GFK

Chapter 13 Case

Annice Marjorie Hartman, Debtor, by and through her undersigned attorney, submits this response to TopLine Federal Credit Union's ("TopLine") objection to confirmation of Debtor's proposed Chapter 13 Plan.

BACKGROUND FACTS

Debtor filed a Chapter 13 petition on August 4, 2004. She and her nonfiling spouse are retired and live solely on Social Security benefits and pension income. They own no real estate and their only automobile is a 1992 Cadillac which has approximately 170,000 miles on the odometer. They own no recreational equipment but for a \$50.00 electric keyboard. After paying their income taxes and the proposed Chapter 13 payment of \$332.00 per month, the Debtor and her husband have \$1,883.00 per month in net income. This places them only \$842.00 over the federal poverty guidelines for a family of two in 2004.

Nonetheless, TopLine has objected to the confirmation of Debtor's Chapter 13 Plan because Debtor has "deflated her income" and has claimed unreasonable expenses. For the reasons stated below, TopLine's objections are unfounded, mean-spirited and

show a lack of understanding of the information provided in Debtor's schedules.

THE INCOME OF DEBTOR IS PROPERLY LISTED

Both the Debtor and her spouse receive monthly Social Security benefits of \$528.00 and \$931.00, respectively, from which there is no withholding for federal or state income taxes. Debtor and her spouse have to pay federal and state income taxes on their income, which is paid by them on a quarterly basis. Because Schedule I has no line item for payment of federal and state taxes other than as a component of wage deductions, counsel for Debtor used that line item to show a 11.2% estimated annual payment for taxes resulting from their income due to Social Security benefits. This reserve of \$164.00 per month is an appropriate deduction from income and TopLine's argument that this is an unwarranted "deflation of income" is baseless.

DEBTOR'S SCHEDULED EXPENSES ARE REASONABLE

On Schedule J, Debtor has listed the combined monthly expenses of she and her spouse; the language of Topline's objection seems to incorrectly assume that these expenses are those of the Debtor alone. Although these expenses are reasonable, if not frugal, TopLine has challenged several expenses as being unnecessary and excessive. Specifically, TopLine claims that a monthly expenses for home maintenance of \$20.00 is unreasonable, that a monthly clothing expense of \$125.00 is excessive, that a monthly automobile expense of \$185.00 is unacceptable and monthly personal care expenses are improper. A showing of the Debtor's actual expenses in these categories clearly shows that the expenses are proper and reasonable:

A. HOME MAINTENANCE EXPENSES

TopLine alleges that Debtor has no home maintenance expenses because she and her husband live in rental housing. This may be true if this category of expense were limited to, for example, structural repairs. But Official Schedule J actually describes this category as "Home maintenance (repairs *and upkeep*) (emphasis added). While the Debtor may not be required to repair her apartment, she certainly has an obligation to keep it clean. To maintain and keep up her home the Debtor incurs the following monthly expenses:

1.	Dish soap	\$ 3.00
2.	Light bulb replacement	1.00
3.	Floor cleaning supplies	7.00
4.	Garbage bags	1.00
5.	Vacuum cleaner bags	1.00
6.	Toilet paper	3.00
7.	Paper towels	2.00
8.	Bar soap	2.00

Monthly total:	\$20.00
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B. PERSONAL CARE EXPENSES

The Debtor and her husband are senior citizens. An unfortunate byproduct of advancing age is an increase in expenses for taking care of themselves. Far from being excessive, as claimed by TopLine, the following monthly expenses are not only reasonable, but required:

1.	Prescription eyeglasses (repair and replacement0 (Debtor had trifocals and her husband has bifocals)	\$ 50.00
2.	Denture repair and replacement (Debtor has full dentures and her husband has a partial denture set)	32.00
3.	Haircuts and hair care	33.00
4.	Shaving supplies	10.00
5.	Deodorant, toothpaste, toothbrushes (1/month)	10.00

Monthly total: \$135.00

C. CLOTHING

Debtor and her husband have allotted each of themselves a monthly clothing allowance of \$62.50. This allowance covers replacement underwear, socks, shoes, slacks and shirts. It also includes a small reserve to purchase, on an as-needed basis, the occasional coat, jacket or dress.

Monthly total: \$125.00

D. TRANSPORTATION EXPENSES

The Debtor and her husband own jointly one vehicle, a 1992 Cadillac with high mileage. The age and mileage of the car results in higher repair expense than might a newer vehicle. For example, Debtor recently had to repair the air conditioning unit of the vehicle for \$800.00, a cost she is paying off at the rate of \$100.00 per month to New Prague Auto Repair. This monthly repair cost, and other essential monthly expenses are as follows:

1.	Repairs	\$ 100.00
2.	Oil and oil changes	15.00
3.	Tires	8.00
4.	License plates	4.00
5.	Car washes	3.00
6.	Lights, filters, wiper blades	6.00
7.	Annual tune-up/inspection	15.00
8.	Gasoline	34.00

Monthly total: \$185.00

At \$1.85/gallon, and 12 miles per gallon, the Debtor and her husband have budgeted enough gasoline to travel an average of 7.3 miles per day. This is barely adequate to provide their essential trips to doctors, for shopping and for church attendance.

Despite TopLines's protestations, it cannot be reasonably argued that any of the above expenses are excessive. They reflect a budget that is austere and is stretched to the breaking point in an attempt to provide as much money as they can to their creditors in the proposed Chapter 13 plan.

THE CHAPTER 13 PLAN IS PROPOSED IN GOOD FAITH

A Chapter 13 plan must be proposed in good faith. 11 U.S.C. §1325 (3). While appropriately citing In re: Estus 695 F.2d 311, TopLine has conveniently forgotten that there are *eleven* factors relating to a determination of "good faith," rather than the three cited in its argument. Among the "Estus factors" indicating good faith on the part of the Debtor are:

1. The amount of the proposed payment and amount of debtor's surplus. In the instant case, Debtor has dedicated a large portion of her net income to the plan and has left for herself and her spouse no surplus at all.
2. The probable or expected duration of the plan. Here, the Debtor has proposed a 36 month plan. The duration of the plan meets the statutory requirements and, given the advanced age of the Debtor, represents a honest effort to fund a plan to the extent of her ability.
3. The accuracy of the plan's statement of debts, expenses and attempt to mislead the court. The schedules and statements submitted by the Debtor were completely honest and complete to the best of her knowledge when filed. She did not list her joint ownership of the 1992 Cadillac on the petition because she thought it was in her husband's name alone. When she investigated this issue, she discovered her ownership and immediately amended Schedule B. Debtor has done nothing to mislead the court.
4. The frequency with which the debtor has sought relief under the Bankruptcy Reform Act. This is the first and only bankruptcy case filed by the Debtor.
5. The motivation and sincerity of the debtor in seeking Chapter 13 relief. The Debtor has honestly sought to achieve a fresh start utilizing Chapter 13. At her advanced age and with her limited resources, it would be virtually impossible to deal with her debt in any other manner. She has

proposed a Chapter 13 plan that places she and her husband at a near subsistence level but does so without complaint, as she recognizes the responsibility she has to her creditors.

6. The burden which the plan's administration would place upon the Trustee. The Chapter 13 plan proposed by the Debtor is a straightforward plan, unencumbered with any provision that would impose any unusual hardship or expense by the Chapter 13 Trustee. The Chapter 13 trustee has not objected to the confirmation of the proposed plan.

The above listed factors clearly point to the Debtor's good faith. Topline's argument that a lack of good faith exists in his case is limited to its strained analysis of those *Estus* factors relating only to the hypothetical nondischargeability of its debt in a hypothetical Chapter 7 case.

The debts listed on Schedule F of the Debtor's petition show a number of creditors, not a single targeted creditor. The charges were for a variety of purchases, including clothing, food, gasoline and healthcare expenses. There were also charges relating to casino gaming. However, none of these charges indicate a lack of good faith.

TopLine's reliance on the holding of In re: Lemaire, 891 F.2d 650 (8th Cir. 1989), is misplaced in alleging bad faith, even if the Debtor incurred some gambling charges. It is well known that *Lemaire* was an extreme case where an overriding public policy barred the confirmation of a Chapter 13 plan when a debtor sought to avoid civil liability in the context of attempted murder using a shotgun. It is curious that TopLine has determined that Debtor's conduct, where she incurred some charges in a legal activity, rises to the level of culpability found in *Lemaire*. It is equally curious that TopLine took no steps to protect itself from the gambling charges it alleges Debtor incurred. It was only after Debtor sought bankruptcy protection that TopLine determined that her conduct was outrageous.

THE PROPOSED CHAPTER 13 PLAN IS FEASIBLE

The Debtor must show that she will be able to make all payments under the plan and to comply with the plan. 11 U.S.C. §1325 (a)(6). Here, Debtor has made her first payment due under the proposed plan and has shown both an ability and a willingness to make all required future payments.

The source of future plan payments are from the most stable of sources, Social Security benefits and pension income. The future payments will not be dependent on employment or threatened by unemployment. Debtor and her husband have a stable lifestyle and modest expenses. They can easily make the monthly payment called for in the proposed Chapter 13 plan.

TopLine's claim that Debtor will not be able to make plan payments because she has gambled in the past is merely speculative and self-serving. TopLine acknowledges in its objection that Debtor stated that she has refrained from gambling and had "learned her lesson." This statement hardly shows an intention to engage in gambling. Rather, it shows a firm resolve by Debtor to take corrective action as may be needed to ensure the viability of her Chapter 13 until its completion.

CONCLUSION

As shown herein, Debtor has proposed in good faith a feasible Chapter 13 plan. The Debtor has been honest with the court at all time and shown an ability and willingness to comply with the proposed Chapter 13 plan. The court should deny the objection of TopLine Federal Credit Union and confirm the proposed Chapter 13 plan.

Dated: September 20, 2004

/e/ Joseph L. Kelly
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UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNEOTA
THIRD DIVISION

In re:

Bankruptcy Case No. 04-34554 GFK

Annice Marjorie Hartman,

Debtor.

ORDER

At Saint Paul, Minnesota.

The above entitled matter came before the undersigned Judge of Bankruptcy Court for confirmation of Debtor's Chapter 13 Plan..

Upon all files, records and proceedings herein and the Court being duly advised in the premises,

IT IS HEREBY ORDERED as follows:

1. That Debtor's Chapter 13 Plan of Reorganization is confirmed..

Dated this _____ day of _____, 2004.

Gregory F. Kishel
United States Bankruptcy Judge

CERTIFICATE OF SERVICE

I, Joseph L. Kelly, hereby state that I caused a true and correct copy of the foregoing Debtor's Response to Topline Federal Credit Union's Objection to Confirmation of Chapter 13 Plan of Annice Marjorie Hartman, Debtor(s), be served by hand upon:

Ruth E. Honkanen
Foley and Mansfield, PLLP
250 Marquette Avenue
Suite 1200
Minneapolis, MN 55401

Dated: September 22, 2004

\E\Joseph L. Kelly